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OCT 27 2006

007/012

Serial No.: 10/039,395

PATENT
Atty. Docket No. 67006-5045**REMARKS**

In this response, claim 1 has been amended, claims 16-17 have been added and claims 11-15 have been canceled. Accordingly, claims 1-11 and 16-17 remain pending in the present application. Reconsideration of the above-identified patent application is hereby requested.

Rejections under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 8-15 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner alleges that these claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention and that applicant has not pointed out these claim limitations are supported by the specification.

Claim 8 recites "The device of claim 1, wherein the temperature adjuster includes a manual adjustment lever attached to the adjustable vent." The manual adjustment lever is shown, for example, in FIGS. 1 and 9 as element 110 and is discussed in the application as published in paragraph [0064], which states "Valve plate 52 rotation is controlled by a lever 110 which passes through the lower front wall 70 of the embodiment (see FIG. 1). Movement of this lever 110 thus regulates oven temperature."

Serial No.: 10/039,395

PATENT
Atty. Docket No. 67006-5045

Claim 9 recites "The device of claim 1, wherein the temperature adjuster includes an electronic actuator attached to the adjustable vent." This limitation is supported by paragraph [0095] of the application as published, which states "Alternatively, when the thermostat 154 setting is exceeded, a solenoid could activate 106 the valve plate 52 shown in FIG. 9 so cool outside air is introduced into the oven cavity 142."

Claim 10 recites "The device of claim 1, wherein the constant heat source comprises an electric heater constructed to output only one level of heat." As is discussed throughout the specification, the claimed device includes electric heating capability. The "only one level of heat" limitation is supported by paragraph [0093], which states "the thermostat 154 has settings ranging from 100 to 450 degrees F. When oven temperatures exceed the thermostat 154 setting, the thermostat 154 turns off power to the heat rods 140." Either the heating rods are on or off, which is only one level of heat.

Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 1-8, 10 and 12-15 under 35 U.S.C. § 103(a) as being unpatentable over Pearlman in view of Perkins. The Examiner alleges that Pearlman et al teach a device comprising an enclosure (Figure 1, #20), a constant radiant heat source (Figure 2, #27), cool-air holes (Figure 2, #44; Figure 3, #6), outside air introduction fans which also act as internal air movement fans (Figure 2, #42); (Figure 3, #52), motors for the fans (Figure 2, #41; Figure 3, #54), a split powered by the

Serial No.: 10/039,395

PATENT
Atty. Docket No. 67006-5045

fan motor (Figure 6, #64), a controller for the heater comprising a start switch (Figure 12), and the controller cycling the heater on and off (column 11, line 61). Phrases such as between about 20% on and about 70% on" and "constant heat" are merely preferred methods of operating the claimed apparatus. The Examiner admits that Pearlman does not teach an adjustable vent and temperature adjustor nor a manual lever for the temperature adjustor.

The Examiner further alleges that Perkins teaches a device comprising cool-air holes (Figure 1, #42), adjustable vents (Figure 1, #46-47), and a manual lever for the temperature adjustor (Figure 1, #44). The Examiner alleges that it would have been obvious to one of ordinary skill in the art to incorporate the vent features of Perkins into the invention of Pearlman et al since both are directed to cooking devices, since Pearlman et al already included cool-air holes and fans (Figure 2, #42 & 44; Figure 3, #6 & 52), and since the vents features of Perkins would have permitted more accurate and precise control of air flow in the device of Pearlman et al.

Furthermore, claims 9 and 11 have been rejected as allegedly being unpatentable over Pearlman in view of Perkins and further in view of Bedford. The Examiner alleges that Pearlman et al and Perkins teach the above mentioned components. Pearlman et al and Perkins do not recite an electronic actuator, or a gas heater. Bedford et al teach a device comprising a vent with an electronic actuator in the form of a solenoid (Figure 2, #43) and a gas heater (Figure 3, #12). The Examiner alleges that it would have been obvious to one of ordinary skill in the art to incorporate the features of Bedford et al into the invention of Pearlman et al, in view of Perkins,

Serial No.: 10/039,395

PATENT
Atty. Docket No. 67006-5045

since all are directed to cooking devices, since Pearlman et al already included a radiant heat source (Figure 2, #27), since Perkins already included a manual vent (Figure 1, #44), since Bedford et al teach that gas was an effective means for applying radiant heat in cookers (column 6, lines 9-30), and since the automatic damper control of Bedford et al would have eliminated the need for the operator to manually adjust the vent of Perkins.

Reconsideration and withdrawal of this rejection is requested in view of the amendments and the following discussion.

Applicant respectfully traverses this rejection. Specifically, Applicant submits that the Examiner has not properly combined the references as there is no suggestion in the references to combine Pearlman with Perkins or Bedford. The cited references taken singly or in combination do not show or suggest the present invention as claimed.

Applicant respectfully submits that the claimed invention patentably distinguishes over the Pearlman, Perkins and Bedford references because it would not have been obvious to one skilled in the art to combine these references. No motivation is provided in Pearlman to provide an adjustable vent or temperature adjustor. Accordingly, the present claims distinguish over the cited references.

Therefore, none of the cited references alone or in combination, render independent claim 1 and new claim 16 obvious.

Furthermore, to further distinguish the present invention, claim 1 has been amended to recite "wherein the temperature adjustor comprises a plate having a

Serial No.: 10/039,395

PATENT
Atty. Docket No. 67006-5045

plurality of openings defined therein." None of the cited references teach, suggest or imply such a plate. See CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003) ("obviousness requires a suggestion of all limitations in a claim") (emphasis added) (citations omitted).

Applicant notes that dependent claims 2-11 by virtue of depending independent claim 1, also contains the same limitation. Therefore these claims are allowable for the same reasons as discussed above.

In view of the foregoing discussion, Applicant submits that the § 103 rejections are overcome. Thus, Applicant respectfully requests that the § 103 rejections be withdrawn.

Serial No.: 10/039,395

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In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply. Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

The Commissioner is hereby authorized to charge any additional fees necessary to Deposit Account 10-0440, or to credit any overpayment to the same.

Respectfully submitted,

Date: October 27, 2006


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